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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Annual Assessment of the Status of )  
Competition in the Market for the )  
Delivery of Video Programming )

CS Docket No. 96-133

DOCKET FILE COPY ORIGINAL

REPLY COMMENTS

U S WEST, Inc. ("U S WEST") herein replies to the comments made in response to the Federal Communications Commission's ("Commission") Notice of Inquiry in the above-captioned docket.<sup>1</sup>

Cable operators are now facing competition from several different directions. Some commentators have addressed the competitive landscape at some length. The National Cable Television Association ("NCTA"), for example, has stated that competition from direct broadcast satellite ("DBS") is intense, and that "[c]ompetition from alternative technologies, such as digital MMDS [multichannel multipoint distribution service], is projected to increase exponentially."<sup>2</sup> Of particular importance to the competitive landscape is the passage of the Telecommunications Act of 1996,<sup>3</sup> and its elimination of the cross-ownership ban on

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<sup>1</sup> In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Notice of Inquiry, 11 FCC Rcd. 7413 (1996).

<sup>2</sup> NCTA at 2.

<sup>3</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act").

telephone companies providing video programming in their own service areas. Yet, as other parties to this proceeding have noted,<sup>4</sup> despite the clear objectives of the 1996 Act, local exchange carrier ("LEC") entry into video programming via integrated wired plant is in serious jeopardy if the Commission adopts the harsh cost allocation rules now being considered in CC Docket No. 96-112.<sup>5</sup> Such entry will not occur if the Commission adopts cost allocation rules that eliminate any incentive LECs may have for entry into the video programming services market. Rules which excessively allocate investment in existing plant that is being used to meet current or projected demand to telephone services, and reduce telephone rates by an exogenous price cap adjustment, will eliminate the incentives for LECs to enter the video programming distribution business with wired solutions.

Such a result would be utterly inconsistent with the overarching goal of the 1996 Act, which is to "provide for a procompetitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition . . . ."<sup>6</sup> Furthermore, such action would be wholly inconsistent with Congress' express direction in Section 706 of the 1996 Act to use regulatory methods that remove barriers to broadband

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<sup>4</sup> SBC Communications, Inc. at 5; BellSouth Corporation and BellSouth Telecommunications, Inc. at 4; Ameritech New Media, Inc. at 5-7 n.3.

<sup>5</sup> See In the Matter of Allocation of Costs Associated with Local Exchange Carrier Provision of Video Programming Services, CC Docket No. 96-112, Notice of Proposed Rulemaking, FCC 96-214, rel. May 10, 1996.

<sup>6</sup> Telecommunications Act of 1996 Conference Report 104-458 at 113 (Feb. 1, 1996).

infrastructure investment.<sup>7</sup> Most importantly, the Commission's adoption of unreasonable cost allocation rules will most assuredly deprive consumers of the benefits of greatest competition, by preventing LECs from entering the video distribution market with their wired solutions.

U S WEST believes that LECs can be viable competitors in wired video programming distribution if the Commission handles cost allocation properly.

U S WEST has conducted a video dialtone market trial<sup>8</sup> in Omaha since September 1, 1995. The video delivery system U S WEST constructed in the trial area passed approximately 50,000 households. The trial area overlays portions of the franchise areas of three different incumbent cable systems.<sup>9</sup> The three incumbent cable systems in that area were, for the most part, not overlapping. Thus, except for the relatively small part of the trial area where the incumbent operators were

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<sup>7</sup> 1996 Act, 110 Stat. at 153 § 706.

<sup>8</sup> The market trial is being conducted in accordance with U S WEST's associated Section 214 Application for Omaha and the Commission's Orders authorizing the trial. Application of U S WEST Communications, Inc. filed June 22, 1993. Amendment and Request for Modification filed Aug. 5, 1994. See In the Matter of the Application of U S WEST Communications, Inc. For Authority under Section 214 of the Communications Act of 1934, as amended, to construct, operate, own and maintain facilities and equipment to provide video dialtone service in portions of the Omaha, Nebraska service area, Order and Authorization, 9 FCC Rcd. 184 (1993) Order and Authorization, 10 FCC Rcd. 4087 (1995), appeal pending sub nom. National Cable Television Association, Inc. v. FCC, No. 95-1297 (D.C. Cir. pet. for rev. filed June 6, 1995). The video dialtone market trial will be terminated on August 21, 1996. U S WEST has secured cable franchises and will commence operation of a cable system under Title VI of the Communications Act of 1934, as amended, on August 22, 1996.

<sup>9</sup> The three cable operators are Cox Cable, Douglas County Cable, and TCI.

overlapping, U S WEST is the second entrant, competing against a well-established cable operator.

Under these circumstances, the market trial became a laboratory for the competitive responses that one can reasonably expect when a well-established cable operator is suddenly faced with competition in video services from a LEC. Consumers have been advantaged from this competition by being offered more programming choices and reduced prices. Some of the benefits made available to consumers in the Omaha market since U S WEST began its market trial are as follows: 1) Basic cable subscribers of one cable operator can now receive their basic tier (21 channels) at no monthly charge and 2) Cable consumers in Omaha have more channels to choose from than before. U S WEST's video dialtone service has a robust channel line-up, and the incumbent cable operators have added new channels or re-packaged channels in ways that favor the customers. For example, the Disney Channel is now on the basic tier of all the cable operators. Customers of two of the cable operators now have access to the SEGA Channel. Subscribers of one cable system now have access to five new channels on the expanded basic tier, and at a \$2.42 lower rate to boot.

As the U S WEST video dialtone trial began to attract customers, the expected benefits of competition began to occur. The incumbent cable operators began to offer packages designed to "win-back" customers that had switched. Such offers included various combinations of the following elements: credits of between \$50.00 and \$75.00, free installation of up to five outlets, from one to three months of

free expanded basic service and extended discounts on premium service packages, including free add-ons of HBO, Cinemax and Showtime.

U S WEST has also observed in its Omaha trial that customers of two of the incumbent cable operators can now receive benefits of joint marketing between the cable operator and a long distance carrier. Such offers have provided that if the subscriber becomes a Sprint Telecommunications Corporation ("Sprint") customer, ten percent of the amount spent on Sprint long distance every month will be given as a discount on the subscriber's cable bill. Another offer provides for free HBO for one year if a subscriber with expanded basic switches to Sprint long distance.

The customers have even benefited in such ancillary matters as the price for inside wire maintenance. During the time of U S WEST's market trial, one cable operator began offering a free inside wire maintenance plan.

U S WEST is convinced that these instances of expanded programming choices, reduced prices, and improved service have occurred because of the advent of competition in the local market for cable service. The Commission must not thwart the robust competition that LECs can bring to the video distribution market by adopting unbalanced cost allocation rules. The unfortunate result of such action by the Commission would be to deprive consumers of the benefits of competition like those that have occurred in Omaha.

In conclusion, the future of full and open competition in the market for delivery of video programming is on the horizon. The 1996 Act's removal of legal impediments to the entry of LECs into the market, if left free of excessive

regulation and overzealous cost allocation rules, will bring the greatest benefits of competition that Congress intended and the American public deserves.

Respectfully submitted,

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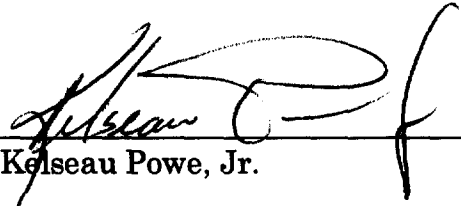
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August 19, 1996

## **CERTIFICATE OF SERVICE**

I, Kelseau Powe, Jr., do hereby certify that on this 19th day of August, 1996, I have caused a copy of the foregoing **REPLY COMMENTS** to be served via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.



Kelseau Powe, Jr.

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